

### REMARKS

Some claims are rejected only under 35 USC 112, first paragraph for lack of enablement, and other claims are rejected on the prior art. The lack of enablement rejection is addressed first.

#### Rejection Under 35 USC 112, First Paragraph re Enablement

Claims 2, 10, 12-17 and 24-26 are not rejected on the prior art, but are only rejected under 35 USC 112, first paragraph for lack of enablement with respect to the terms "product delivery member" and a "product holding structure" in line 7 of claim 2. The basis for the rejection was stated as follows: "The specification is silent as to what these elements comprise." As is explained in more detail below, these terms refer to cap 18 and flat upper surface 52 in the Figs. 4-6 embodiment and cap 60 and flat upper surface 68 in the Figs. 7-8 embodiment, which components are described as delivering product and holding product in the specification, which has been amended to explicitly state that these components are "product delivery members" and "product holding structures."

As described in claim 2, the "product delivery member [is] attached to said top of said container and [has] a product holding structure that is positioned with respect to said valve mechanism to receive said product." As is described in the Summary of the Invention section at page 1, line 25 to page 2, line 7:

[The] product holding structure ... hold[s] the product in position for application.

Preferred embodiments of the invention may include one or more of the following features. The product holding structure can take a variety of forms to assist in applying product. For example, it can have a generally flat upper surface or an arcuate surface. The product holding structure can be a porous structure having pores that receive the product. The product holding structure can be an elastomeric applicator. The product holding structure can be a sintered structure. The product holding structure can have a textured surface. The product holding structure can have a grid surface.

As is noted with respect to the Figs. 4-6 embodiment:

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With this arrangement, the product is dispensed with nozzle 16 extended above the upper surface 52 of cap 18. The dispensed product can be collected on surface 52, and nozzle 16 can then be retracted during application of the product, e.g., to a user's skin. (Page 5, lines 24-26).

Thus cap 18 serves as a product delivery member, and its upper surface 52 is a product holding structure. As noted, at page 1 lines 25-26, the "product holding structure ... holds the product in position for application" and this is precisely what surface 52 is described as doing at page 5, lines 24-26. Surface 52 is a "generally flat upper surface," which is one of the recited examples for a "product holding structure" at page 2, line 3.

With respect to the modified cap shown in Figs. 7-8, it is said:

Nozzle 62 has internal passageways 64 that direct the product to side openings 66, where the product is dispensed laterally, to the upper surface 68 of cap 60 in the extended position shown in FIG. 8. Cap 60 and nozzle 62 are desirably used on container 40 of FIGS. 4-6. The product is collected on the upper cap surface 68 prior to application to a user's skin. Thus a shaver can dispense and apply shaving cream without the need to put foam on his or her hands and without the need to rinse off the hands after applying the cream and prior to shaving. In addition, surface 68 can be provided with functional surfaces to provide efficacy, comfort or a combination of benefits. Surface 68 can be provided with a textured applicator. Surface 68 could be provided with flocked foam surface (e.g., available from TekPak in NJ and Claremont Flock Inc. of Claremont, NH). Alternatively, porous sintered domes, of the type employed in Narta deodorant cans, can also be used. Surface 68 can be flat, as shown, or arcuate. It could also be provided with a grid structure or elastomeric applicator. (Page 5, line 28 - page 6, line 8).

Thus cap 60 also serves as a product delivery member, and its upper surface 68 is a product holding structure. As noted, at page 1 lines 25-26 the "product holding structure ... holds the product in position for application" and this is precisely what surface 68 is described as doing at page 5, lines 31-32. Surface 52 is a "generally flat upper surface" which is one of the recited examples for a "product holding structure" at page 2, line 3. In addition, surface 68 is described as taking a variety of different forms at page 6, lines 4-8, which are the same as described for the product holding structure at page 2, lines 3-7. The various forms also correspond to the specific examples recited in dependent claims 10 - 17.

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It is clear from the above discussion that cap 18 and flat upper surface 52 in the Figs. 4-6 embodiment and cap 60 and flat upper surface 68 in the Figs. 7-8 embodiment are examples of the "product delivery members" and "product holding structures" of claim 2. The specification has been amended to make this explicit at page 5, between lines 26 and 27 and at page 6, between lines 8 and 9.

Accordingly, the specification is now explicit as to what the objected to elements comprise, and the specification is enabling under 35 USC 112, first paragraph with respect to these components. Because claims 2, 10, 12-17 and 24-26 are not rejected on the prior art, they now are in condition for allowance.

#### Rejection on Prior Art

Independent claims 1 and 5 and dependent claims 21 and 24-26 were rejected as anticipated by Baldwin U.S. Patent No. 3,429,484.

Independent claims 1 and 5 are directed to a hand-held pressurized product dispenser that includes a container with a hand-engageable body portion, a valve mechanism at the top of the container that is movable with respect to the container to cause pressurized discharge of the product, and a valve actuation lever that is connected to the valve mechanism and extends along the container body. Claim 1 further recites that a larger displacement of the end of the lever causes a controlled, relatively smaller displacement of the valve mechanism, permitting adjustable (i.e., "throttled") delivery of the product. Claim 5 further recites that the valve engaging portion of the lever is located between the pivot end and the hand-engageable portion, a configuration providing for larger pivotal movements of the hand-engageable portion.

Claim 1 has been amended to recite a smooth pivoting action. This action is inherent from the examples of pivoting described in the preferred embodiments (e.g., the mating arcuate surfaces of Figs. 1-3, the living hinge of Fig. 9, or the pivot pins of Figs. 4-6, 10, 11). This action is important to permit a throttled delivery of the product, such that the operator can easily move the lever to a continuously variable amount, and the nozzle will similarly move a proportionate amount.

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Claim 5 has been amended to recite that the nozzle outlet is axially aligned with the container to provide axial discharge. As noted at page 5, lines 8-18, the handle provides an ergonomic actuation for device 10, which has axial delivery.

Baldwin discloses a side delivery spray can to which U-shaped clamp 48 and an attached lever actuation mechanism have been attached by a snap connection to permit reuse with other cans. Operating element 79 (the lever) has a rough pivotal connection at "generally rectangular horizontally elongated aperture 72" (col. 2, line 51) through which upward furcation 80 and downward furcation 81 pass "to prevent withdrawal of the actuator from the clamp " (col. 2, lines 55-60). Baldwin notes that the "loose fit of the furcated end portion permits limited vertical pivotal movement of the actuator" (col. 2, lines 60-62).

It would appear that pivotal connection at the furcated end would shift around as the lever is pivoted such that there is not a smooth pivot action of the type required by the invention claimed herein in claim 1. This does not seem to present a problem in Baldwin, as Baldwin does not mention any type of throttling action, and, would appear to be only interested in typical on/off operation of the type typically used with such spray cans.

Accordingly, Baldwin's device does not have the smooth pivotal action or throttling required by claim 1. The Baldwin reference also nowhere suggests such action or throttling. Accordingly the subject matter of claim 1 is not anticipated or rendered obvious by Baldwin.

It is also clear that Baldwin nowhere discloses or suggests the axial direction of the nozzle member as required by claim 5. Accordingly the subject matter of claim 5 is not anticipated or rendered obvious by Baldwin.

The remaining rejected claims depend on claim 1 or claim 5 and are allowable with it.

Attached is a marked-up version of the changes being made by the current amendment.

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Serial No. : 09/442,347  
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Attorney's Docket No.: 00216-468001 / T-670

Applicant asks that all claims be allowed. Enclosed is a \$110.00 check for the Petition for Extension of Time fee. Please apply any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

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**Version with markings to show changes made**

In the specification:

At page 5, after line 26, please insert the following new paragraph:

--Thus cap 18 serves as a product delivery member, and its upper surface is a product holding structure.--

At page 6, after line 8, please insert the following new paragraph:

--Thus cap 60 serves as a product delivery member, and its upper surface 68 is a product holding structure.--

In the claims:

Claims 1 and 5 have been amended as follows:

1. (Amended) A hand-held pressurized product dispenser comprising  
a container containing product under pressure, said container having a top, a hand-engageable body portion and a bottom,  
a valve mechanism at the top of said container that communicates with said container and is movable with respect to said container to cause pressurized discharge of said product out of said container, and  
a valve actuation lever that is pivotaly connected to said valve mechanism via a smooth pivotal connection and extends along said body to a lever end such that relatively larger displacement of said lever end causes a controlled, relatively smaller displacement of said valve mechanism, permitting adjustable throttled delivery of said product.

5. (Amended) A hand-held pressurized product dispenser comprising  
a container containing product under pressure, said container having a top, a hand-engageable body portion and a bottom,  
a valve mechanism at the top of said container that communicates with said container and is movable with respect to said container to cause pressurized axial discharge of said product out of said container via a nozzle outlet that is axially aligned with said container, and

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a valve actuating member that is connected to actuate said valve and has a hand-engageable portion that extends along said body,

said valve actuating member having a pivot end that is pivotally connected with respect to said container and also having a valve engaging portion that engages said valve mechanism and is located between said pivot end and said hand-engageable portion.

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